SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 325

INGER JULIANE HANSEN, PETITIONER,

vs.

EDWARD L. HAFF, ACTING COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Record from district court of the United States, Northern California	1
Petition for writ of habeas corpus	1
Order to show cause	9
Notice of filing of findings and decision of Secretary of Labor	10
Exhibit "B"—Findings and decision of Secretary of Labor	11
Order of submission	19
Order denying petition for writ of habeas corpus	20
Notice of appeal	20
Petition for appeal	21
Assignments of error	22
Order allowing appeal	25
Order transmitting original exhibits	27
Præcipe for transcript of record	27
Clerk's certificate	28
Citation	29
Proceedings in United States circuit court of appeals, ninth circuit	31
Order of submission	33
Motion for substitution of appellee, consent, and order granting motion	34
Order directing filing of opinions and decree	37
Opinion, Sawtelle, J	37
Dissenting opinion, Mack, J	40
Decree	45
Order staying issuance of mandate	46
Clerk's certificate	47
Order allowing certiorari	49

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NAMES OF ATTORNEYS.

STEPHEN M. WHITE, ESQ., 576 Sacramento St., San Francisco, Calif.

For Petitioner and Appellant.

UNITED STATES ATTORNEY, San Francisco, Calif.

For Respondent and Appellee.

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 20815-L.

In the Matter of

INGER JULIANE HANSEN,

on Habeas Corpus;

U. S. Department of Labor
Warrant Proceedings No. 55762/874.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable, the Southern Division of the United States District Court, for the Northern District of California:

The petition of Inger Juliane Hansen respectfully shows:

I.

That she is a native and a citizen of Denmark.

II.

That she first entered the United States in September, 1922, and her admission as a permanent

resident of the United States, as of the date of her said entry, has been confirmed by the United States Department of Labor, as evidenced by the records of that Department, the Bureau of Immigration thereof, file No. 55483/28.

III.

That she has resided and remained continuously in the United States ever since her entry in September, 1922, save for the following trips abroad: departed from the United States in 1926 and returned thereto in May, 1928; departed from the United States in May, 1931, and returned thereto on September 6, 1931; that, upon the occasion of her departure on each of said trips, she was in possession of and the lawful holder of a permit to re-enter the United [1]* States issued by the Commissioner General of Immigration under the provisions of Section 10 of the Immigration Act of 1924 (8 U. S. C. A. Sec. 210); that, upon the occasion of her return to the United States on each of said trips, she was admitted to the United States by the United States Immigration authorities for permanent residence.

IV.

That on the 6th day of September, 1931, she was taken into custody by the United States Immigration authorities for the Port of Seattle, Washington, without a warrant having been issued for her arrest

*Page numbering appearing at the foot of page of original certified Transcript of Record.

by the Secretary of Labor and that, thereafter, to wit: on the 9th day of September, 1931, the Secretary of Labor issued a warrant for her arrest on the ground that her entry into the United States on September 6, 1931, was an entry in violation of the Immigration Act of 1917 (39 Stat. L. 874), in that she entered the United States for an immoral purpose.

V.

That she was accorded a hearing before the Immigration authorities for the Port of Seattle, Washington, on the charge contained in the aforementioned warrant of arrest and, as a result of the evidence adduced at said hearing, the Secretary of Labor found that the evidence sustained the charge and that he, thereupon, issued a warrant for the deportation of your petitioner to Denmark and directed that she be surrendered into the custody of the Commissioner of Immigration for the Port of San Francisco, California, for the purpose of effectuating the warrant of deportation.

VI.

That she is now in the custody of John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, California, and the said John D. Nagle, acting under the orders of the Secretary of Labor, has given notice of his intention to deport your petitioner [2] away from and out of the United States to Denmark and, unless this Court intervenes, she will be so deported.

VII.

That, as your petitioner is advised and believes, the Secretary of Labor, in ordering the deportation of your petitioner and the said John D. Nagle, in holding her in custody so that her deportation may be effected, are acting in excess of the power and authority committed to them by the statutes in such cases made and provided for and are unlawfully imprisoning, confining and restraining her of her liberty in the following particulars, to wit:

1. That the charge that your petitioner entered the United States for an immoral purpose on September 6, 1931 and that she is, therefore, subject to deportation, is based upon Section 3 of the Immigration Act of February 5, 1917 (8 U. S. C. A. Sec. 133) providing as follows:

> "That the following classes of aliens shall be excluded from admission into the United States; * * * persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *."

And, upon Section 19 of the same Act, providing as follows:

> "That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported; * * *."

That it is claimed by the Secretary of Labor that following your petitioner's entry into the United States in September, 1922, and beginning in about the year 1924, that your petitioner had adulterous relations with a person in the United States and that these relations continued up until and including the 6th day of September, 1931, and that upon said date, when your petitioner entered the United States, it was the intention of your petitioner to resume these relations in the United States; that your petitioner alleges [3] that the evidence adduced before the immigration authorities establishes that she was legally and permanently admitted to the United States in September, 1922, that ever since said date the United States has been her permanent and only place of abode, that ever since said date she has been employed as a domestic in the United States, save for such intervals when she was absent from the United States on temporary visits abroad, as hereinbefore alleged, that when she departed from the United States in May, 1931, it was her sole purpose to make a temporary visit to her parents in Denmark and, at the conclusion of her said visit, to return to the United States to continue her residence therein and to resume her occupation as a domestic therein, that, with the sole purpose and intention of returning to the United States to continue her residence therein and to resume her occupation as a domestic therein, she entered the United States on September 6, 1931, and

that any intention that she may have had to enter the United States on the said date for the purpose of having adulterous relations with a person in the United States was wholly incidental and immaterial to her purpose in returning to the United States to resume her residence therein and to resume her occupation as a domestic therein; that the Secretary of Labor, in holding and deciding that your petitioner entered the United States on September 6, 1931, for an immoral purpose has not been guided by the evidence, that his decision is not supported by any substantial evidence and he has thereby acted arbitrarily and unfairly and has denied your petitioner the full and fair hearing to which she was and is entitled.

2. That your petitioner alleges, as she is advised and believes, that Section 3 of the Immigration Act of February 5, 1917, supra, providing for the exclusion of those certain classes of aliens therein specified, has reference only to an original entry and that said section does not contemplate within its meaning the exclusion [4] from the United States of any alien, who may fall within any of the excluded classes as specified in said Section 3, where such alien has been legally and permanently admitted to the United States and is returning thereto from a temporary visit abroad; that your petitioner alleges, as she is advised and believes, that having been legally and permanently admitted to the United States in September, 1922, and having returned to the United States on September 6, 1931,

from a temporary visit abroad, she was not and could not be excluded from admission to the United States on September 6, 1931, on the ground that she was entering the United States for an immoral purpose.

3. That your petitioner alleges, as she is advised and believes, that adultery does not involve moral turpitude and that Section 3 of the Immigration Act of 1917, supra, providing for the exclusion from the United States of aliens entering for an immoral purpose, contemplates within its meaning only those acts of immorality which constitute moral turpitude; that your petitioner alleges, as she is advised and believes, that the Secretary of Labor has acted arbitrarily and unfairly and has misinterpreted the statutes in such cases made and provided for in holding and deciding that your petitioner entered the United States for an immoral purpose by reason of her alleged entry for the purpose of having adulterous relations with a person in the United States.

VIII.

That your petitioner has filed herewith, as Exhibit "A," a copy of the record and proceedings had before the immigration authorities and hereby adopts and makes the said exhibit a part of this petition.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein, directed to John D. Nagle, as Commissioner of Immig- [5] ration for

the Port of San Francisco, directing him to hold the body of your petitioner before this Court at a time and place to be specified, together with the time and cause of her detention so that the same may be inquired into to the end that the petitioner may be restored to her liberty and go hence without day and that pending the proceedings herein and until further order of this Court and that she be released on bond in the amount of One Thousand ($1,000.00) Dollars pending the proceedings herein and until further order of this Court, the bond in the amount of One Thousand ($1,000.00) Dollars being equivalent to the amount of bond which was required of your petitioner for her release pending the proceedings before the immigration authorities.

Dated this 30th day of December, 1931.

INGER JULIANE HANSEN,
Petitioner.

STEPHEN M. WHITE,
Attorney for Petitioner. [6]

United States of America,
State of California,
City and County of San Francisco.—ss.

Inger Juliane Hansen, being first duly sworn, deposes and says:

That she is the petitioner named in the foregoing petition; that she has read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge except as to those mat-

ters which are therein stated on her information and belief, and as to those matters she believes it to be true.

INGER JULIANE HANSEN.

Subscribed and sworn to before me this 30th day of December, 1931.

[Seal] STEPHEN M. WHITE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 30, 1931. Walter B. Maling, Clerk. [7]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor, and upon reading the verified petition on file herein;

IT IS HEREBY ORDERED, that John D. Nagle, Commission of Immigration for the Port of San Francisco, appear before this Court on the 25th day of January, 1932, at the hour of 10 o'clock A. M. of said day, to show cause, if any he have, why a writ of habeas corpus should not be issued as prayed for, and that a copy of this order be served upon the said Commissioner;

AND IT IS FURTHER ORDERED, that Inger Juliane Hansen, the petitioner herein, be not removed from the jurisdiction of this Court and that she be enlarged on bond in the sum of One Thou-

sand ($1,000.00) Dollars pending this hearing and until further orders herein.

Dated at San Francisco, California, December 30, 1931.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Dec. 30, 1931. Walter B. Maling, Clerk. [8]

[Title of Court and Cause.]

NOTICE OF FILING OF FINDINGS AND DECISION OF SECRETARY OF LABOR.

To John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, respondent herein, and to George J. Hatfield, United States Attorney, his attorney:

You and each of you will please take notice that the petitioner herein files herewith under Exhibit "B," as part and parcel of his petition for a writ of habeas corpus and with the same force and effect as if set forth in full in said petition, a copy of the findings and decision of the Secretary of Labor, through his Board of Review, ordering the deportation of the petitioner.

Dated this 22nd day of April, 1932.

STEPHEN M. WHITE,
Attorney for Petitioner. [9]

EXHIBIT "B"

FINDINGS AND DECISION OF SECRETARY OF LABOR.

"55762/874—Seattle November 14, 1931.

In re: Inger Juliana Hansen, 33, alias Mrs. A. W. Bolinger.

This case comes before the Board of Review in warrant proceedings.

Board: Messrs. Winnings, Brown, Ludwig, O'Brien and Hurley.

Attorney Roger O'Donnell, heard November 12, 1931.

Attorney Fred H. Lysons, at the port, interested.

The record in this case concerns a 33 year old single female, native and citizen of Denmark, domestic servant and cook by occupation, who first arrived in the United States at the port of Seattle, Washington, via Vancouver, B. C., on September 19, 1922, at which time she was recorded as a temporary visitor. She remained in the United States continuously from September, 1922, to March, 1926, when she was made the subject of deportation proceedings. The old file is not available, but it appears from the record that the warrant of arrest which was issued at that time was cancelled and the alien's admission to the United States made permanent.

Hearing was accorded to the alien at Seattle, Washington, on September 17, 1931, by Inspector John P. Boyd, Jr. The alien is at large on bond.

Nearest relatives abroad. Father and mother: Mr. and Mrs. Anders Hansen, Stege, Prasto, Amt. Denmark. [10]

Sometime subsequent to March, 1926, and after the conclusion of deportation proceedings, the alien voluntarily left this country in 1926 for Denmark. She next arrived in this country at the port of New York in May, 1928, at which time she was admitted as a returning resident upon presentation of a re-entry permit. Since her first arrival in 1922, she has made her home in or near Los Angeles, California. At the preliminary hearing she testified that in 1924, she became acquainted with a Mr. A. W. Bolinger, a married man and a native born American citizen. She further testified that she began to have sexual relations with Bolinger in Los Angeles, California, in 1925, but that she was employed at the time and she and Bolinger did not live together. It is apparent that she has continued her immoral relations with Bolinger since 1924, and admits that he has from time to time given her money, approximately $500.00 all together, and clothing.

In May, 1931, accompanied by Bolinger, she left Los Angeles for a trip to Europe, via New York, travelling from Los Angeles to New York with Bolinger as man and wife. She claims that she purchased from her own funds a roundtrip ticket from Los Angeles to New York, but that Bolinger paid most of the cost of the ocean voyage from New York to Europe and return and her expenses in

Europe. She further admits that she and Bolinger maintained the relationship of man and wife part of the time in Europe but not all of the time.

In August 27, 1931, the alien, accompanied by Bolinger, arrived as a passenger on the SS "Duchess of Richmond," at Montreal, [11] Canada. Still in the company of Bolinger she arrived on the SS "Princess Marguerite" at Seattle, Washington, on September 6, 1931, at which time she was admitted as a returning resident. It is shown by the record that Bolinger paid her fare from Vancouver to Seattle and she admits that when they left Vancouver it was her intention to continue the relationship of man and wife with Bolinger until they arrived in Los Angeles, but denies that it was her intention to continue such relationship after arrival in Los Angeles.

Upon arrival at Seattle on September 6, 1931, she went to the Olympic Hotel, where she was registered with Bolinger as man and wife under the name of Mr. and Mrs. Hansen, and at the time of her arrest by the immigration authorities was occupying the same room in this hotel with Bolinger.

The following is quoted from a report made by Immigrant Inspector J. P. Sanderson, under date of September 8, 1931, which report was introduced into evidence and made a part of the record over objection by the alien's attorney:

> "Mr. Bolinger stated that he is a citizen of the United States born in the State of Ohio, 58 years of age, banker, residing at Long Beach,

Calif.; that he is married and lived with his wife up to the time he departed for Europe; that he has two sons who have been admitted to practice law in California; that he left the United States May 23, 1931, via New York and visited Holland, Belgium, England and other countries and was a delegate to the International Rotary Club Convention at Vienna; that he returned to this continent on the SS "Duchess of Richmond," arrived at Montreal a few days ago and proceeded by the C. P. Ry. to Vancouver, B. C., thence by boat to Seattle. [12]

He further states that he first met Miss Hansen in 1923 at Los Angeles; that they had planned the trip to Europe, but being apprehensive of the Mann Act, Miss Hansen drew money from her own bank account and by check paid for her own transportation from California to New York and from Montreal to California; that they traveled in the same compartment from California to New York, but did not occupy the same stateroom from New York to Europe or from Europe to Montreal to Vancouver; that he reserved a stateroom from Vancouver to Seattle, but it was used merely for the purpose of keeping their bagbage.

Mr. Bolinger states that he bought various clothes for Miss Hansen and paid her ocean transportation both ways and paid other inci-

dental expenses. Mr. Bolinger further states that his wife has been in poor health for five years and that it has been his intention for some time to divorce his wife and marry Miss Hansen. He also states that they lived together as man and wife most of the time that they were in Europe."

At the formal hearing, Inspector Sanderson was called as a witness in order that the alien's attorney might have an opportunity for cross-examination. The attorney as shown by the record declined to cross-examine this witness for the government.

In so far as is disclosed by the record, Mr. Bolinger was available as a witness to either affirm or deny the statements alleged to have been made by him as indicated in the report of Inspector Sanderson. His presence was not demanded by the attorney nor was he called as a witness by the attorney.

In the brief submitted by the attorney in this case, it is stated that Mr. Bolinger "was also arrested." There is nothing in the evidence to support this statement. Objection is also made in the attorney's brief to the letter or report of Inspector Sanderson [13] which was introduced into evidence over the objection of the alien's attorney.

"In administrative hearings, ex parte affidavits can be received and considered as evidence, particularly if no objection is made to their reception, and providing administrative officials are willing to entertain cross-examina-

tion and rebutting proof." Mita v. Bonham, C. C. A. 9th, Circuit, 25 Fed. (2d) 11.

"Where alien was represented by counsel at subsequent hearings before immigration officials, who cross-examined witnesses appearing against her, and was permitted, together with attorney, to inspect warrant of arrest and evidence on which it was based, the fact that she was not represented by counsel at the preliminary hearing held not to constitute a violation of Immigration Rules July 1, 1925, rule 18, subd. d, par. 2." Plane v. Carr, C. C. A. 9th., Circuit, 19 Fed. (2d) 470.

The attorney in his brief cites the case of U. S. v. Bitty, 208 U. S. 393, and stresses the point that the subject of these proceedings is not a "concubine" and the Bitty case is, therefore, no authority for any such proceeding as has been instituted here.

The word "concubinage" is defined by Webster as follows: "The cohabiting of a man and woman who are not legally married," and the following is given by the same authority for the word "concubine": "A woman who cohabits with a man without being his wife; a kept mistress; a woman who lives in concubinage with a man."

The case of U. S. v. Bitty, was a criminal prosecution under the old Immigration Act of 1907, Bitty being prosecuted under that act for bringing a woman to the United States for an immoral purpose. Though penal laws are to be construed

strictly, the Court [14] in the Bitty case held: "We must assume that in using the words 'or for any other immoral purpose,' Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse." And further, "The statute in question, it must be remembered, was intended to keep out of this country immigrants whose permanent residence here would not be desirable or for the common good, and we cannot suppose either that Congress intended to exempt from the operation of the statute the importation of an alien woman brought here only that she might live in a state of concubinage with the man importing her, or that it did not regard such an importation as being for an immoral purpose."

The case of Hunter v. U. S. (45 Fed. (2d) 55) was a criminal prosecution under the Mann Act, and the facts in that case are totally dissimilar to the facts in the instant case.

Here we have an alien woman who has been on her own admission living in concubinage (as defined by Webster) with Bolinger almost continuously since 1924. Bolinger paid her passage from Europe to the United States. She is an alien, and although previously a resident of this country, upon her return she was subject to all the provisions of the Immigration Rules to the same extent as she would have been if she had never resided in this country. The Board is of the opinion that at the

time of her last entry, it is clearly established she entered for an immoral purpose. [15]

The charge contained in the warrant has been sustained.

Considered and ordered that the alien be deported to Denmark at S. S. expense on the following ground:

That she is in the United States in violation of the Act of February 5th, 1917, in

That she entered the United States for an immoral purpose.

W. W. HUSBAND,
Second Assistant Secretary."

Service and receipt of copy of the within *Notice,* etc., and Exhibit "B" is hereby admitted this 22d day of April, 1932.

GEO. J. HATFIELD,
Attorney for .....

[Endorsed]: Filed Apr. 22, 1932. Walter B. Maling, Clerk. [16]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 21st day of March, in the year of our Lord one thousand nine hundred and thirty-two.

Present: the Honorable HAROLD LOUDERBACK, District Judge.

[Title of Cause.]

ORDER SUBMITTING MATTER ON BRIEFS.

This matter came on regularly for hearing on order to show cause as to issuance of writ of habeas corpus. On motion of C. M. Carpenter, Esq., Asst. U. S. Atty., ordered petitioner have 10 days to file reply brief. [17]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 6th day of May, in the year of our Lord one thousand nine hundred and thirty-two.

Present: the Honorable HAROLD LOUDERBACK, District Judge.

[Title of Cause.]

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS.

The petition for writ of habeas corpus, having been heretofore submitted, and due consideration having been thereon had, it is ordered that said petition be and the same is hereby denied, and that the petitioner, Inger Juliane Hansen, be remanded to the custody of the respondent. [18]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the above-entitled Court, to John D. Nagle, Commissioner of Immigration, and to George J. Hatfield, Esq., United States Attorney, his Attorney:

You and each of you will please take notice that Inger Julian Hansen, the petitioner and appellant

in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein on May 6th, 1932, denying the petition for a writ of habeas corpus filed herein.

Dated this 27th day of May, 1932.

STEPHEN M. WHITE,
Attorney for Petitioner. [19]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Inger Julian Hansen, the petitioner and appellant in the above-entitled matter, and respectfully shows:

That on the 6th day of May, 1932, the above-entitled Court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

Wherefore the appellant prays that an appeal may be granted in her behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, for the correction of the errors as complained of, and further, that a transcript of the

record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further, that the said appellant be held within the jurisdiction of this Court during the pendency of the appeal herein, so that she may be produced in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, May 27, 1932.

STEPHEN M. WHITE,
Attorney for Appellant. [20]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the appellant, Inger Julian Hansen, through her attorney, Stephen M. White, Esq., and sets forth the errors she claims the above-entitled Court committed in denying her petition for a writ of habeas corpus, as follows:

I.

That the Court erred in not granting the writ of habeas corpus and discharging the appellant from the custody and control of John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

II.

That the Court erred in not holding that it had jurisdiction to issue the writ of habeas corpus as prayed for in the petition on file herein.

III.

That the Court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus. [21]

IV.

That the Court erred in not holding that there was no substantial evidence before the Secretary of Labor to warrant his conclusion that the appellant entered the United States for an immoral purpose.

V.

That the Court erred in not holding that there was no substantial evidence before the Secretary of Labor to warrant his conclusion that the appellant entered the United States for the purpose of concubinage.

VI.

That the Court erred in not holding that the Secretary of Labor acted arbitrarily and unfairly in finding that the appellant entered the United States for the purposes of concubinage and/or for an immoral purpose.

VII.

That the Court erred in not holding that the evidence before the Secretary of Labor established that the petitioner entered the United States for the purpose of resuming her residence therein to pursue a lawful occupation.

VIII.

That the Court erred in not holding that the Secretary of Labor acted arbitrarily and unfairly in not finding that the appellant entered the United States for the purpose of resuming her residence therein to pursue a lawful occupation.

IX.

That the Court erred in not holding that Section 3 of the Immigration Act of February 5, 1917, has reference only to aliens who are entering the United States for the first time and that the said statute does not contemplate the exclusion from the United States of an alien, who has been legally and permanently admitted [22] to the United States and who is returning thereto from a temporary visit abroad.

X.

That the Court erred in not holding that the Secretary of Labor was without power and/or jurisdiction to order the deportation of the appellant.

XI.

That the Court erred in denying the petition for a writ of habeas corpus.

WHEREFORE, appellant prays that the said order and judgment of the United States District Court for the Northern District of California made, given and entered herein in the office of the Clerk of said Court on the 6th day of May, 1932, denying the petition for a writ of habeas corpus, be reversed and that she restored to her liberty and go hence without day.

Dated at San Francisco, California, this 27th day of May, 1932.

STEPHEN M. WHITE,
Attorney for Appellant.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [23]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing to the above-entitled Court that Inger Julian Hansen, the petitioner and appellant herein, has this day filed and presented to the above Court her petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this Court denying a writ of habeas corpus herein and dismissing her

petition for said writ, and good cause appearing therefor,

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled Court make and prepare a transcript of all the papers, proceedings and records in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER HEREBY ORDERED that the execution of the warrant of deportation for the said Inger Julian Hansen be and the same is hereby stayed pending this appeal and that she remain at liberty under bond in the amount of One Thousand ($1,000.00) Dollars, pending this appeal and until further orders herein.

Dated this 27th day of May, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [24]

[Title of Court and Cause.]

ORDER TRANSMITTING ORIGINAL EXHIBITS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the Immigration Records filed as exhibits herein, may be transmitted by the Clerk of the above-entitled Court to and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit to be taken as part of the record on appeal in the above-entitled cause with the same force and effect as if embodied in the transcript of record and so certified by the Clerk of this Court.

Dated this 27th day of May, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [25]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of said Court:

Sir:

Please issue copies of the following papers for transcript on appeal:

1. Petition for writ of habeas corpus.
2. Order to show cause.

3-a. Notice of filing of Findings and decision of Secretary of Labor.

3. Findings and decision of Secretary of Labor—Petitioner's exhibit "B."

4. Minute order re introduction of Immigration Records.

5. Minute order denying petition for writ of habeas corpus.

6. Notice of appeal.

7. Petition for appeal.

8. Assignment of errors.

9. Order allowing appeal.

10. Order transmitting original immigration records.

11. Citation on appeal.

12. Praecipe.

STEPHEN M. WHITE,
Attorney for Appellant.

[Endorsed]: Filed Aug. 2, 1932. Walter B. Maling, Clerk. [26]

[Title of Court and Court.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, contain a

full, true, and correct transcript of the records and proceedings in the Matter of Inger Juliane Hansen, on Habeas Corpus, No. 20815-L, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Ten Dollars ($10.00) and that the said amount has been paid to me by the Attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of August, A. D. 1932.

[Seal] WALTER B. MALING,
Clerk.
By C. W. TAYLOR,
Deputy Clerk. [27]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America.—ss.

The President of the United States, to John D. Nagle, Commissioner of Immigration, Port of San Francisco, and George J. Hatfield, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within

30 days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Inger Julian Hansen is appellant and you are appellee, to show cause, if any there be why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the part in that behalf.

Dated at San Francisco, California, May 27th, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [28]

[Endorsed]: No. 6921. United States Circuit Court of Appeals for the Ninth Circuit. Inger Julian Hansen, Appellant vs. John D. Nagle, Commissioner of Immigration for the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division. Filed August 6, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6921

United States

Circuit Court of Appeals

For the Ninth Circuit.

INGER JULIANE HANSEN,

Appellant,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,

Appellee.

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the twentieth day of December in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

No. 6921

INGER JULIANE HANSEN,

Appellant,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,

Appellee.

ORDER OF SUBMISSION

Pursuant to stipulation of counsel for the respective parties, ORDERED appeal in above cause submitted to the court for consideration and decision on briefs on file.

[Title of Court and Cause.]

MOTION FOR SUBSTITUTION OF APPELLEE; CONSENT TO GRANTING OF MOTION; ORDER GRANTING MOTION.

Comes, now, Inger Juliane Hansen, the appellant in the above entitled cause, through her attorney, Stephen M. White, Esq., and respectfully shows the court:

That an appeal in the above entitled cause is now pending before this Court and that said appeal was submitted to this Court for decision on December 20, 1932;

That John D. Nagle as Commissioner of Immigration for the Port of San Francisco was named in said cause as appellee; that said John D. Nagle died on December 30, 1932; that Edward L. Haff ever since the death of said John D. Nagle, has been and is now the acting United States Commissioner of Immigration for the Port of San Francisco;

It is further shown to this court that there is substantial need for continuing and maintaining this cause, in that the right of the appellant to be released and discharged from the custody and control of the United States Immigration authorities and to be and remain in the United States, as against the right of the United States to detain and deport her from the United States, as will fully appear from the records on file herein, cannot be successfully maintained or adjudicated unless said Edward L. Haff, as acting Commissioner of Immigration for the Port of

San Francisco, is substituted as appellee herein for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

WHEREFORE, it is prayed that Edward L. Haff as acting Commissioner of Immigration for the Port of San Francisco, be substituted in said cause for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

Dated at San Francisco, California, this 18th day of January, 1933.

STEPHEN M. WHITE,
Attorney for Appellant.

State of California
City and County of San Francisco—ss.

Stephen M. White, being duly sworn, deposes and says:

That he is the attorney of record for Inger Juliane Hansen, the appellant in the within entitled cause, and, as such, is authorized to verify this motion; that he has read the foregoing motion and is familiar with the statements therein contained, and that the facts therein stated are true, except such facts as may be stated upon information and belief, and, as to those facts, he believes it to be true.

STEPHEN M. WHITE

Subscribed and sworn to before me this 18th day of January, 1933.

[Seal] JOSEPH PENSA
Notary Public in and for the City and County of San Francisco, State of California.

CONSENT TO GRANTING OF MOTION

Consent is hereby given to the granting of the foregoing motion for the substitution, as appellee, of Edward L. Haff, as acting Commissioner of Immigration for the Port of San Francisco, for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

Dated at San Francisco, California, this 24th day of January, 1933.

I. M. PECKHAM
United States Attorney
Attorney for Edward L. Haff,
as acting United States
Commissioner of Immigration
for the Port of San Francisco.

ORDER GRANTING MOTION FOR SUBSTITUTION.

Upon reading the foregoing motion and good cause appearing therefor:

IT IS HEREBY ORDERED that the said motion be granted and that Edward L. Haff, as acting Commissioner of Immigration for the Port of San Francisco, be substituted, as appellee, in said cause, for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

Dated this 25th day of January, 1933.

CURTIS D. WILBUR
U. S. Circuit Judge.

[Endorsed]: Filed Jan 25, 1933. Paul P. O'Brien, Clerk.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the eighth day of May in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF DECREE.

By direction of the court, ORDERED that the opinion and dissenting opinion this day rendered by this court in above cause be forthwith filed by the clerk and that a decree be filed and recorded in the minutes of this court in accordance with the majority opinion filed.

[Title of Court and Cause.]

OPINION

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Before: WILBUR, SAWTELLE and MACK, Circuit Judges.

SAWTELLE, Circuit Judge:

This is an appeal from an order denying a petition

for a writ of habeas corpus. Appellant is a citizen of Denmark, and has been ordered deported from the United States on the ground that she entered for an immoral purpose, contrary to the provisions of the Immigration Act of February 5, 1917 (8 U. S. C. A., §136), which provides that aliens who enter the United States for the purpose of prostitution, or for any other immoral purpose, shall be excluded.

Appellant first came to the United States in 1922 and made her home in Los Angeles, California, where she was employed as a domestic servant. It appears from the record that in 1924 she became acquainted with one Bolinger, a married man, in Los Angeles, and in 1925 she commenced to have illicit relations with him. In 1926 she made a trip to Denmark, returning here in 1928. In May, 1931, she made another trip to Europe, on which she was accompanied by Bolinger. On this trip they continued their illicit relations and traveled together, for at least a part of the time, as husband and wife. They returned here together on September 6, 1931, and entered at the port of Seattle, Washington, where they registered at a hotel as husband and wife.

At a preliminary hearing before immigration inspectors the following morning, appellant admitted her previous illicit relations with Bolinger, in Los Angeles and on the trip to Europe, and that she intended to continue such relations with him until they reached Los Angeles, but that thereafter she did not intend to see him,—"I might see him, but that is all." Bolinger also admitted their illicit relationship on the trip to Europe. Appellant denied all of these admissions at a subsequent hearing.

However, it is not within our province to weigh the evidence. "The duty to do that is with the immigration officials and the Secretary of Labor, and the responsibility rests solely upon them, their decision being final if there is any evidence whatever to support it." United States ex rel Bauder v. Uhl (C. C. A. 2), 211 F. 628, 633. See, also Low Wah Suey v. Backus, 225 U. S. 460, 468. The evidence clearly establishes that appellant entered the United States for an immoral purpose. Upon her entry at Seattle, appellant and Bolinger immediately registered at a hotel as husband and wife, and had traveled as such on their trip to and from Europe. Under all the circumstances, it might well have been found that she intended to continue her illicit relations with Bolinger after their return to Los Angeles, as well as during their journey thither.

Appellant vigorously contends that she is not a concubine, because unlawful cohabitation, as distinguished from clandestine and sporadic intercourse, is essential to create the status of a concubine. However that may be, "We must assume that in using the words 'or for any other immoral purposes,' Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse. These views may not be overlooked in determining questions involving the morality or immorality of sexual intercourse between particular persons." United States v. Bitty, 208 U. S. 393. Whether or not appellant may be considered as a concubine,

therefore, is immaterial. By her own admissions, at the time she entered the United States she did so for an immoral purpose: to continue her illicit relations with Bolinger, at least for a limited period.

Appellant is not entitled to remain here solely by force of the reentry permit issued to her and because of her previous residence. The act provides that "At any time within five years after entry any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon warrant of the Secretary of Labor, be taken into custody and deported." 8 U. S. C. A. §155. The ban of the immigration laws attaches irrespective of previous residence or domicile in this country. Lapina v. Williams, 232 U. S. 78; Lewis v. Frick, 233 U. S. 291.

Affirmed.

MACK, Circuit Judge (dissenting):

Appellant is ordered to be deported as an alien excluded by law. Act of Feb. 5, 1917, c. 29, §19, 39 Stat. 889, 8 U. S. C. A., §155. I cannot concur in the contention that she entered this country for an "immoral purpose" within the meaning of Section 3 of the Act of Feb. 5, 1917 (39 Stat. 875; 8 U. S. C. A., §136 (g)), which excluded "prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose * * *."

1. On this record appellant could not be found to have been or to have intended to be a concubine

or mistress, even though it could be found therefrom that in returning from abroad to her residence in Los Angeles, she intended to have sexual relations with her companion until their arrival and even occasionally thereafter.

The question for determination is whether or not such extra-marital relations, despite the social and moral opprobrium that attaches thereto, are included within the phrase "any other immoral purpose," as used in this statute. Clearly here as in United States v. Bitty, 208 U. S. 393 (1908), where a similar phrase in the Immigration Act of 1907 was construed,

> "in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose,' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the same clause of the statute." (p. 402.)

The District (155 F. 938) and the Supreme Courts were agreed in that case that the rule of ejusdem generis was applicable; the difference between them was whether or not a concubine was ejusdem generis with a prostitute. As to this, the Supreme Court, reversing the District Court, said:

> "The prostitute may, in the popular sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life * * *."

That case, however, does not justify a holding that appellant falls within the rule; on the contrary,

while the concubine and the mistress are comparable to the prostitute, common understanding draws the line too sharply between those classes and the class which indulges occasionally in extra-marital relations, to permit of a construction under the ejusdem generis rule that would exclude the latter class as immoral persons like prostitutes.

2. Another reason distinct from the ejusdem generis rule, for holding that appellant is not excludable as one seeking entry "for an immoral purpose," is that, fairly construed, the "immoral purpose" must be found to be the dominant, and not a merely incidental cause or purpose of her return.

As stated by Judge Hutcheson in sustaining the writ of habeas corpus in ex parte Rocha, 30 F. (2d) 823 (S. D. Texas, 1929), the only case cited or found in which this question was involved:

> "* * * the dominant and real facts in the case, * * * are not that he came into the United States for an immoral purpose, but that having gone across the river for an hour's visit, he returned to his home and his business for the purpose of pursuing the ordinary tenor of his life, and whether he did or did not have improper relations with the woman on his return is wholly immaterial, and cannot be found to be the cause or purpose of his return."

In that case there was evidence that the alien had indulged in intercourse with the woman (who had accompanied him on an hour's visit to Mexico) two

or three times a month during a period of eighteen months.

Here, appellant, resident in this country, visited her parents abroad as she had done in 1926; her companion on parts of the journey had attended a convention in Vienna. So far as the record shows, both were returning to this country "for the purpose of pursuing the ordinary tenor" of their lives. Appellant's uncontradicted testimony shows that prior to leaving the United States she had been regularly employed as a cook and domestic at a salary as high as $115. per month; there would seem to be no reason to doubt her testimony that she intended to resume such work or that the same employment agency which had previously placed her would, pursuant to its promise, find such work for her on her return. It seems to me entirely clear that reestablishing herself in what had become her home city, there again to work as a cook, was the real or dominant purpose of her return to this country and that an intention to have sexual relations with her companion until their arrival in Los Angeles or even after that time was a purpose purely incidental to her return. This is borne out by her testimony, evidently not disbelieved by the immigration officials, that

> "After I got back to Los Angeles I thought I would go where I would not see him as I used to. I might see him but that is all."

That the "immoral purpose" specified in the act shall be not an incidental but the dominant purpose

in coming to the United States, is a construction thereof which avoids imputing to Congress the improbable intent that deportation with its grave and permanent consequences shall follow merely because in returning to her residence, there to follow her legitimate and gainful occupation, the alien may have expected to indulge in extra-marital relations en route or occasionally thereafter. Even in the case of concubinage the Supreme Court has gone no further than to say, in the Bitty case, at page 403, that "the importation of an alien woman brought here only that she might live in a state of concubinage", was for an immoral purpose.

In my judgment, the order of the District Court should be reversed.

[Endorsed]: Opinion and Dissenting Opinion. Filed May 8, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 6921

INGER JULIAN HANSEN,

Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigration for the Port of San Francisco,

Appellee.

DECREE.

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Filed and entered May 8, 1933. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. Stephen M. White counsel for the appellant, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including August 8, 1933; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

WM. H. SAWTELLE,
United States Circuit Judge.

Dated: San Francisco, California, June 27, 1933.

[Endorsed]: Filed Jun 27, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 6921

INGER JULIANE HANSEN,

Appellant,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,

Appellee.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-six (46) pages, numbered from and including 1 to and including 46, to be a full, true and correct copy of the entire record, excluding original exhibit, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2d day of August A. D. 1933.

(Seal) PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4210)

Subject Index

	Page
PETITION FOR WRIT OF CERTIORARI	1
Questions Presented	1
Summary Statement of the Facts of the Case	3
Reason Relied on for the Granting of the Petition—Conflict of Decisions	4
Certificate of Counsel	8
NOTICE OF PRESENTATION OF PETITION FOR WRIT OF CERTIORARI	9
Admission of Service	10
BRIEF IN SUPPORT OF PETITION	11
Statement Disclosing Basis of Jurisdiction	11
Statement of the Case	12
Argument	15
The applicable statutes	15
Jurisdiction of the Courts to interfere with the decision of the immigration authorities	15
Burden of proof	16
The petitioner was not a concubine	16
Unless the petitioner's entry was dominated and controlled by an immoral purpose, she was not within the condemnation of the statute	17
Unless the petitioner's entry was for an immoral purpose of the same general class as prostitution, she was not within the statute	20
Conclusion	22

Table of Cases and Statutes Cited

CASES — Pages

Alpert v. U. S., 12 Fed. (2d) 352, C. C. A. 2nd 7, 18

Bilokumsky v. Tod, 68 L. Ed. 221, 223, 263 U. S. 149, 155 16

Caminetti Case, 242 U. S. 470, 491, 37 Sup. Ct. 192 (61 L. Ed. 442, L. R. A. 1917F, 502, Ann. Cas. 1917B, 1168) 7, 19

Corpus Juris, Vol. 12, Section 392 17

Ex parte Morel, 292 Fed. 432 19

Ex parte Rocha, 30 Fed. (2d) 923 ..... 18, 20

Fisher v. United States, 266 Fed. 667, C. C. A. 4th 7, 18, 19, 20

Gegiow v. Uhl, 239 U. S. 3, 36 Sup. Ct. 2, 60 L. Ed. 114 16

Hansen v. Haff, 65 Fed. (2d) 94 2

Hunter v. U. S., 45 Fed. (2d) 55, C. C. A. 4th 7, 18, 20

Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 33 Sup. Ct. 185, 57 L. Ed. 431 at pg. 433 16

Lau Ow Bew v. United States, 144 U. S. 47, 12 Sup. Ct. 517, 36 L. Ed. 340, at page 344 12

Lee v. City of Oxford, 134 Miss. 647, 99 So. 509 17

Sloan v. United States, 287 Fed. 91, C. C. A. 8th 7, 18

Suslak v. U. S., 213 Fed. 913, C. C. A. 9th 17

Trilby v. State, 189 Ind. 205, 126 N. E. 481, 482 17

United States v. Bitty, 208 U. S. 393, 52 L. Ed. 543, 28 Sup. Ct. 396 ..... 6, 7

Webster's Dictionary 17

Welsch v. United States, 220 Fed. 764, C. C. A. 4th 7, 18, 20

Zakonaite v. Wolf, 226 U. S. 272, 33 Sup. Ct. 31, 57 L. Ed. 218 16

36 *Cyc.* 1119, 1122 21

2 *Lewis's Sutherland, Stat. Constr.*, Sec. 432, and authorities cited 21

STATUTES

Judicial Code, Sec. 238, as amended February 13, 1925 (43 Stat. L. 936, 938, 28 U. S. C. A. 345) 11

Mann or White Slave Act (18 U. S. C. A., Sec. 398) 7

Section 3 of Immigration Act of February 5, 1917 (8 U. S. C. A., Sec. 136) 2, 15, 21

Section 19 of Immigration Act of February 5, 1917 (8 U. S. C. A., Sec. 155) 15

In the Supreme Court
OF THE
United States

October Term, 1933.

No.....

INGER JULIANE HANSEN,
Petitioner,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of Inger Juliane Hansen respectfully shows:

QUESTIONS PRESENTED.

On November 14, 1931, the petitioner was ordered deported to Denmark by the Secretary of Labor, on

the ground that she is an alien, who, at the time of her return on September 6, 1931, from a temporary sojourn in Europe, entered the United States for an immoral purpose. Having been taken into custody for the purpose of deportation, a petition for a writ of habeas corpus was presented to the United States District Court for the Northern District of California, Southern Division to test the validity of the order of deportation and the detention under it. The petition was denied and the Circuit Court of Appeals for the Ninth Circuit affirmed the order and judgment of the District Court. *Hansen v. Haff*, 65 Fed. (2d) 94.

The questions involved are:

(1) Whether or not an alien resident of the United States, returning to the United States from a temporary sojourn abroad and having, at the time of her return, the intention to indulge in occasional sexual relations, but having no intention to live in the state of concubinage or to practise prostitution, enters for an "immoral purpose", within the meaning of Section 3 of the Immigration Act of February 5, 1917, providing as follows:

> "That the following classes of aliens shall be excluded from admission into the United States: * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *."
>
> (8 U. S. C. A., Sec. 136.)

(2) Whether or not an alien resident of the United States upon her return to the United States from

a temporary sojourn abroad, enters for an "immoral purpose", within the meaning of Section 3 of the Immigration Act of February 5, 1917, supra, where the facts establish that her return is dominated by a purpose to resume her residence in the United States to pursue therein a legitimate occupation, although she entertained the incidental intention to indulge in occasional illicit sexual relations.

SUMMARY STATEMENT OF THE FACTS OF THE CASE.

The petitioner, a native and citizen of Denmark, a cook and housemaid by occupation, was first admitted to the United States on September 19, 1922. She has resided and remained continuously ever since her admission in the United States, save for the following trips to Europe: departed in 1926 and returned in May, 1928; departed in May, 1931, and returned on September 6, 1931. In 1924, at Los Angeles, California, she became acquainted with a married man and in 1925 began to have illicit sexual relations with him; these relations continued, but she was employed and did not cohabit or live with him; in May, 1931, when she departed from Los Angeles on her second trip to Europe, she was accompanied by this man and that they maintained illicit sexual relations part of the time, but not all of the time, while in Europe; that upon her return to the United States, she was accompanied by this man and, upon arrival at Seattle,

Washington, where they entered the United States on September 6, 1931, they went to a hotel and registered as man and wife for one night.

The foregoing statement of facts is taken from the findings and decision of the Secretary of Labor and it is upon these facts that the decision of the Secretary of Labor ordering the deportation of the petitioner is predicated. A copy of the findings and decision of the Secretary of Labor was filed as an exhibit to the petition for a writ of habeas corpus. (Tr. of R. p. 11 et seq.)

REASON RELIED ON FOR THE GRANTING OF THE PETITION—CONFLICT OF DECISIONS.

Diversity of judicial opinion is relied upon for the granting of the petition.

Upon the questions presented, the Circuit Court of Appeals for the Ninth Circuit, in deciding the case at bar, was, itself, divided. His Honor Judge Sawtelle, writing the majority opinion, in which His Honor Judge Wilbur concurred, held, under the facts stated, as follows:

1. That indulgence in occasional illicit sexual relations is contrary to good morals and that, therefore, the petitioner, who had the intention, at the time of entry, to indulge in such relations, entered for an immoral purpose within the meaning of

Section 3 of the Immigration Act of February 5, 1917, supra.

2. That it was immaterial whether or not the petitioner entered to live in a state of concubinage, as long as she intended to indulge in occasional illicit sexual relations.

3. That it was immaterial whether or not the petitioner at the time of her entry was returning to an established residence in the United States.

His Honor Judge Mack, in a strong dissenting opinion, held as follows:

1. That entry for an immoral purpose, under Section 3 of the Immigration Act of February 5, 1917, supra, contemplates an entry for the purpose of engaging in immoral practices of the same general class, *ejusdem generis,* as prostitution.

2. That indulgence in occasional illicit sexual relations is not an immoral practice *ejusdem generis* with prostitution and that, therefore, the petitioner did not enter for an immoral purpose.

3. That petitioner's entry into the United States was dominated by the purpose to return to her established residence in the United States to pursue therein her occupation as a cook and housemaid and that, therefore, she did not enter for an immoral purpose, although she may have had the incidental purpose to indulge in occasional illicit sexual relations.

The majority opinion is in direct conflict with the decision of the District Court for the Southern District of Texas in the case of

Ex parte Rocha, 30 Fed. (2d) 823,

in which His Honor Judge Hutcheson held that, as long as an alien's entry was *dominated* by a purpose to return to an established residence and business in the United States, an incidental or secondary purpose to have illicit sexual relations cannot be found to be the cause or purpose of his entry.

As pointed out by His Honor Judge Mack, in his dissenting opinion in the case at bar, the case of *Ex parte Rocha,* supra, is the only one cited or found in which the question was directly involved.

In principle, the majority opinion, in failing to apply the rule of *ejusdem generis* is, also, in conflict with the decision of

United States v. Bitty, 208 U. S. 393, 28 Sup. Ct. 396, 52 L. Ed. 543,

which involved a criminal prosecution under the immigration laws for bringing an alien to the United States "for the purpose of prostitution or for any other immoral purpose." There, the rule of *ejusdem generis* was conceded to be applicable and the phrase "any other immoral purpose" was construed,

> "in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose,' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the same clause of the statute."

The majority opinion, also, runs counter to a line of decisions, which involve the construction of the words "immoral purpose", as found in the Mann or White Slave Act (18 U. S. C. A. Sec. 398). These decisions hold that the words "immoral purpose" import that a transportation in interstate commerce must be *dominated* and *controlled* by an immoral purpose and that where an interstate journey was taken definitely for another purpose and would have been taken in any event, the fact that illicit intercourse took place in the course of the journey, as an incidental occurrence, did not bring the case within the meaning and intent of the statute:

Welsch v. United States, 220 Fed. 764, C. C. A. 4th;

Fisher v. United States, 266 Fed. 667, C. C. A. 4th;

Hunter v. United States, 45 Fed. (2d) 55, C. C. A. 4th;

Alpert v. United States, 12 Fed. (2d) 352, C. C. A. 2nd;

Sloan v. United States, 287 Fed. 91, C. C. A. 8th.

The Mann or White Slave Act and the Immigration Act were read in *pari materia* in the case of

Caminetti v. United States, 242 U. S. 470, 37 Sup. Ct. 61 L. Ed. 442,

to the extent that t' is Honorable Court, in construing the words "immoral purpose", as found in the Mann

or White Slave Act, depended upon the construction, which had been placed upon those words in the case of *United States v. Bitty,* supra.

A statement of the case and an argument in support of this petition are contained in the brief annexed hereto.

Wherefore petitioner respectfully prays that this Court will issue a writ of certiorari to the Circuit Court of Appeals for the Nitnh Circuit, in order that the judgment of that Court in this case may be reviewed and corrected.

ROGER O'DONNELL,
STEPHEN M. WHITE,
Counsel for Petitioner.

Dated: San Francisco, California,
August 4th, 1933.

CERTIFICATE OF COUNSEL.

The undersigned counsel for petitioner certify that the above and foregoing petition is not interposed for delay, and that, in their opinion, said petition is well founded.

ROGER O'DONNELL,
STEPHEN M. WHITE,
Counsel for Petitioner.

Dated: San Francisco, California,
August 4th, 1933.

In the Supreme Court
OF THE
United States

October Term, 1933.

No.....

INGER JULIANE HANSEN,
Petitioner,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,
Respondent.

NOTICE OF PRESENTATION OF PETITION FOR WRIT OF CERTIORARI.

To Honorable Homer S. Cummings, Attorney General of the United States, Washington, D. C.:

Sir:

You will please take notice that the petitioner above named, through her counsel, will present, to the above named court on the 8th day of August, 1933, at the hour of twelve o'clock noon of said day, or as soon thereafter as his counsel can be heard, at the court-room thereof in the Capitol Building, in the City of Washington, District of Columbia, her petition for a writ of certiorari.

Said petition will be based upon this notice, the accompanying petition for a writ of certiorari and all of the papers and records on file.

Yours, etc.
ROGER O'DONNELL,
STEPHEN M. WHITE,
Attorneys for Petitioner.

Dated: San Francisco, California,
August 4, 1933.

ADMISSION OF SERVICE.

Receipt of a copy of the foregoing petition for writ of certiorari and notice of presentation of petition for writ of certiorari is hereby admitted this 8th day of August, 1933.

.....

Attorney General of the United States.

.....

Assistant Attorney General of the United States.
Attorneys for Respondent.

In the Supreme Court
OF THE
United States

October Term, 1933.

No.....

INGER JULIANE HANSEN,
Petitioner,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,
Respondent.

BRIEF IN SUPPORT OF PETITION.

STATEMENT DISCLOSING BASIS OF JURISDICTION.

(a) The statutory provision sustaining the jurisdiction of this Court to allow the writ of certiorari is contained in Section 238 of the Judicial Code, as amended February 13, 1925 (43 Stat. L. 936, 938, 28 U. S. C. A. 345).

(b) A petition for a writ of habeas corpus was filed in the District Court for the Northern District of California on December 30, 1931 (Transcript of Record pp. 1-9.)

(c) The judgment of the District Court denying the petition for a writ of habeas corpus was filed and entered on May 6, 1932 (Transcript of Record, p. 20).

(d) The opinion of the Circuit Court of Appeals for the Ninth Circuit was rendered and filed on May 8th, 1933 (Transcript of Record, p. 37). The opinion is reported in 65 Fed. (2d) 94.

(e) The judgment of the Circuit Court of Appeals was made, entered and filed on May 8th, 1933 (Transcript of Record, p. 45).

(f) No petition for re-hearing by Circuit Court of Appeals was filed.

(g) The judgment of the Circuit Court of Appeals in habeas corpus proceedings is a final judgment.

Lau Ow Bew v. United States, 144 U. S. 47, 12 Sup. Ct. 517, 36 L. Ed. 340, at page 344.

STATEMENT OF THE CASE.

The proceeding is in habeas corpus and was commenced for the purpose of obtaining the discharge of the petitioner from the custody of the respondent, who, upon orders of the Secretary of Labor, was holding her for deportation to Denmark.

On September 9, 1931, the Secretary of Labor issued his warrant for the petitioner's arrest on the charge that she is in the United States in violation of the

Immigration Act of February 5, 1917, in that she entered the United States on September 6, 1931, for an immoral purpose. On November 14, 1931, the Secretary of Labor issued his warrant for the petitioner's deportation to Denmark on the charge stated.

The original immigration records, which disclose the proceedings resulting in the issuance by the Secretary of Labor of the order of deportation, were filed by respondent, as exhibits, at the hearing of the petition for a writ of habeas corpus in the District Court. Upon appeal, these records, by order of Court (Tr. of R. p. 27) were transmitted to the Circuit Court, as part of the record on appeal, and are now before this Honorable Court.

The essential facts, in respect to which there is no dispute, are:

1. On September 19, 1922, the petitioner first came to the United States; she has ever since resided in the United States.
2. In 1924, she became acquainted at Los Angeles, where she resided and where she was employed as a domestic, with a married man and thereafter began to have illicit sexual relations with him; she did not live with him and was not supported by him, but she lived where she was employed and supported herself from her own earnings, which ran as high as $115.00 per month.
3. In May, 1931, she made a trip to Europe to visit her parents in Denmark; prior to her departure on this trip, she had arranged with an

employment agency to secure employment for her as a domestic upon her return.

4. On September 6, 1931, she returned to the United States, through the Port of Seattle, Washington, and was admitted by the immigration authorities at that port as a returning resident.

5. On her trip to Europe, she was accompanied by the man, whom she had previously met at Los Angeles; this man went to Europe to attend a convention in Vienna; while in Europe, he visited the petitioner at the home of her parents, but did not have illicit relations with her there; part of the time, he travelled with the petitioner in Europe and had illicit relations with her.

6. Following their return to the United States on September 6, 1931, the petitioner and her companion went to a hotel at Seattle and registered for one night as man and wife.

7. When the petitioner entered the United States on September 6, 1931, she intended to have illicit relations with her companion until she reached her home in Los Angeles; upon reaching Los Angeles, she intended to resume her employment as a domestic.

The foregoing facts are established by the evidence adduced by the immigration authorities at the hearing under the warrant of arrest. (Original Immigration Record, No. 57762/874.) The Secretary of Labor, in his findings and decision, admits the facts (Tr. of

R. pp. 11-18) and the same have been adopted, in the main, in the opinions, majority and minority, of the Circuit Court.

ARGUMENT.

THE APPLICABLE STATUTES.

Section 3 of the Immigration Act of February 5, 1917, provides, as follows:

> "That the following classes of aliens shall be excluded from admission to the United States; * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *."
>
> (8 U. S. C. A. Sec. 136.)

Section 19 of the same Act provides, as follows:

> "At any time within five years after entry any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported; * * *."
>
> (8 U. S. C. A. Sec. 155)

JURISDICTION OF THE COURTS TO INTERFERE WITH THE DECISION OF THE IMMIGRATION AUTHORITIES.

If the immigration authorities draw an erroneous conclusion of law from established facts, the Courts

are empowered to release the alien in habeas corpus proceedings.

Gegiow v. Uhl, 239 U. S. 3, 36 Sup. Ct. 2, 60 L. Ed. 114.

Moreover, the decision of the immigration authorities must find adequate support in the evidence.

Zakonaite v. Wolf, 226 U. S. 272, 33 Sup. Ct. 31, 57 L. Ed. 218;

Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 33 Sup. Ct. 185, 57 L. Ed. 431, at page 433.

BURDEN OF PROOF.

In deportation proceedings, as distinguished from exclusion proceedings, the burden is upon the immigration authorities to show that the alien has done some act to forfeit his right of residence in the United States.

Bilokumsky v. Tod, 68 L. Ed. 221, 223, 263 U. S. 149, 155.

THE PETITIONER WAS NOT A CONCUBINE.

The majority opinion does not hold that the petitioner was a concubine or that she entered the United States to live in a state of concubinage. It merely holds that the matter is immaterial, as long as the petitioner had the purpose to indulge in occasional illicit sexual relations. However, the Secretary of

Labor predicates his decision entirely upon the theory that the petitioner was a concubine (Tr. of R. pp. 16-18). From the established facts, his conclusion was clearly erroneous.

The sexual relations, in which the petitioner indulged, were sporadic and clandestine. She did not live or cohabit with her companion and he did not maintain or support her. She was regularly employed as a domestic, she lived where she was employed and she supported herself with her own earnings.

Unlawful cohabitation is essential to create a state of concubinage.

Webster's Dictionary;
Suslak v. U. S., 213 Fed. 913 (C. C. A. 9th), at pages 917 and 918;
Trilby v. State, 189 Ind. 205, 126 N. E. 481, 482;
Lee v. City of Oxford, 134 Miss. 647, 99 So. 509;
12 *Corpus Juris* 392.

UNLESS THE PETITIONER'S ENTRY WAS DOMINATED AND CONTROLLED BY AN IMMORAL PURPOSE, SHE WAS NOT WITHIN THE CONDEMNATION OF THE STATUTE.

To sustain an order of deportation on the ground that the petitioner entered the United States for an immoral purpose, the immigration authorities were required to prove that her entry was dominated and controlled by that particular purpose.

The New Standard Dictionary defines "purpose" as "the idea or ideal kept before the mind as an end

of effort or action; the particular thing that any object or course of action is intended to effect or attempt."

Where illicit sexual relations are not the object or basic purpose of entry, but are merely incidental, there is no "immoral purpose." Such has been held to be true of the statute under consideration.

In *Ex parte Rocha,* 30 Fed. (2d) 823 (D. C.), the Court said:

> "* * * the dominant and real facts in the case, * * * are not that he came into the United States for an immoral purpose, but that having gone across the river for an hour's visit, he returned to his home and his business for the purpose of pursuing the ordinary tenor of his life, and whether he did or did not have improper relations with the woman on his return is wholly immaterial, and cannot be found to be the cause or purpose of his return."

It has been uniformly held under the White Slave Act, regarding transportation of women for an "immoral purpose" that the unlawful intercourse subsequently engaged in must have been the end and object to be achieved, and if the transportation was only incidental to other purposes there has been no violation of the law.

Fisher v. U. S., 266 Fed. 667 (C. C. A. 4th);
Hunter v. U. S., 45 Fed. (2d) 55;
Alpert v. U. S., 12 Fed. (2d) 352;
Sloan v. U. S., 287 Fed. 91 (C. C. A. 8th);
Welsch v. United States, 220 Fed. 764 (C. C. A. 4th).

There are numerous other authorities holding in this same vein. The case of *Fisher v. U. S.*, supra, is typical. In that case the defendant had illicit relations with a girl domiciled in one state, took her across the state line for a visit and they subsequently returned and continued their illicit relations. The court held there had been no transportation for an "immoral purpose" within the contemplation of the statute.

Whether the proceedings arise under the Mann or White Slave Act or under the immigration laws, the words "immoral purpose" have the same meaning.

Caminetti v. U. S., 242 U. S. 470, 37 Sup. Ct. 61 L. Ed. 442;

Ex parte Morel, 292 Fed. 423.

In the case of *U. S. v. Bitty*, 208 U. S. 393, 28 Sup. Ct. 396, 52 L. Ed. 543, this Honorable Court went no further than to say that "the importation of an alien woman brought here *only* that she might live in a state of concubinage" was for an immoral purpose

The facts establish that the petitioner, at the time of her departure from the United States for Europe in May, 1931, was a lawfully domiciled resident of the United States, her residence having been acquired in 1922; during her residence in the United States, she pursued the occupation of a domestic and, prior to her departure on her trip, she had made arrangements with an employment agency to secure employment for her upon her return; upon her return, on September 6, 1931, she was admitted as a returning resident. It cannot, therefore, reasonably be doubted that the petitioner intended and had the purpose to

return to the United States to resume her residence and to pursue her regular occupation therein. The United States was her actual and only place of residence and her means of livelihood was dependent upon her return thereto. These considerations naturally and reasonably impel the conclusion that she would have, in any event and entirely irrespective of any thought or purpose in mind as regards future illicit sexual conduct, returned to the United States to pursue the ordinary and normal tenor of her life. Because it is reasonable to expect that she would have, in any event, returned to the United States to resume her residence and occupation therein, it must follow that there was no perceptible relation of cause and effect between her entry and her alleged illicit conduct or that her entry was induced or caused by a consideration of future illicit conduct.

Ex parte Rocha, supra;
Fisher v. U. S., supra;
Welsch v. U. S., supra;
Hunter v. U. S., supra.

UNLESS THE PETITIONER'S ENTRY WAS FOR AN IMMORAL PURPOSE OF THE SAME GENERAL CLASS AS PROSTITUTION, SHE WAS NOT WITHIN THE STATUTE.

It is a fundamental rule of statutory construction that where general words follow the enumeration of particular classes of persons or things, these words will be construed as applicable only to persons or

things of the same general nature or class as those enumerated.

36 *Cyc.* 1119, 1122;
2 *Lewis's Sutherland, Stat. Constr.*, Sec. 423, and authorities cited.

The statute under consideration places in an excluded class "prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose." (8 U. S. C. A., Sec. 136.)

In the case of *United States v. Bitty*, supra, the rule of *ejusdem generis* was conceded and it was held that an alien, who was brought to the United States to live in a state of concubinage, was within the condemnation of the statute making it unlawful to bring an alien to the United States "for the purpose of prostitution or for any other immoral purpose." The Court expressly said:

> "* * *. It may be admitted that, in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the same clause of the statute. 2 Lewis's Sutherland, Stat. Constr. Sec. 423, and authorities cited. But that rule cannot avail the accused in this case; for the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution * * *."

Common understanding does not hold indulgence in occasional clandestine sexual relations comparable to

living in a state of concubinage or to practicing prostitution. As His Honor Judge Mack, said, in his dissenting opinion:

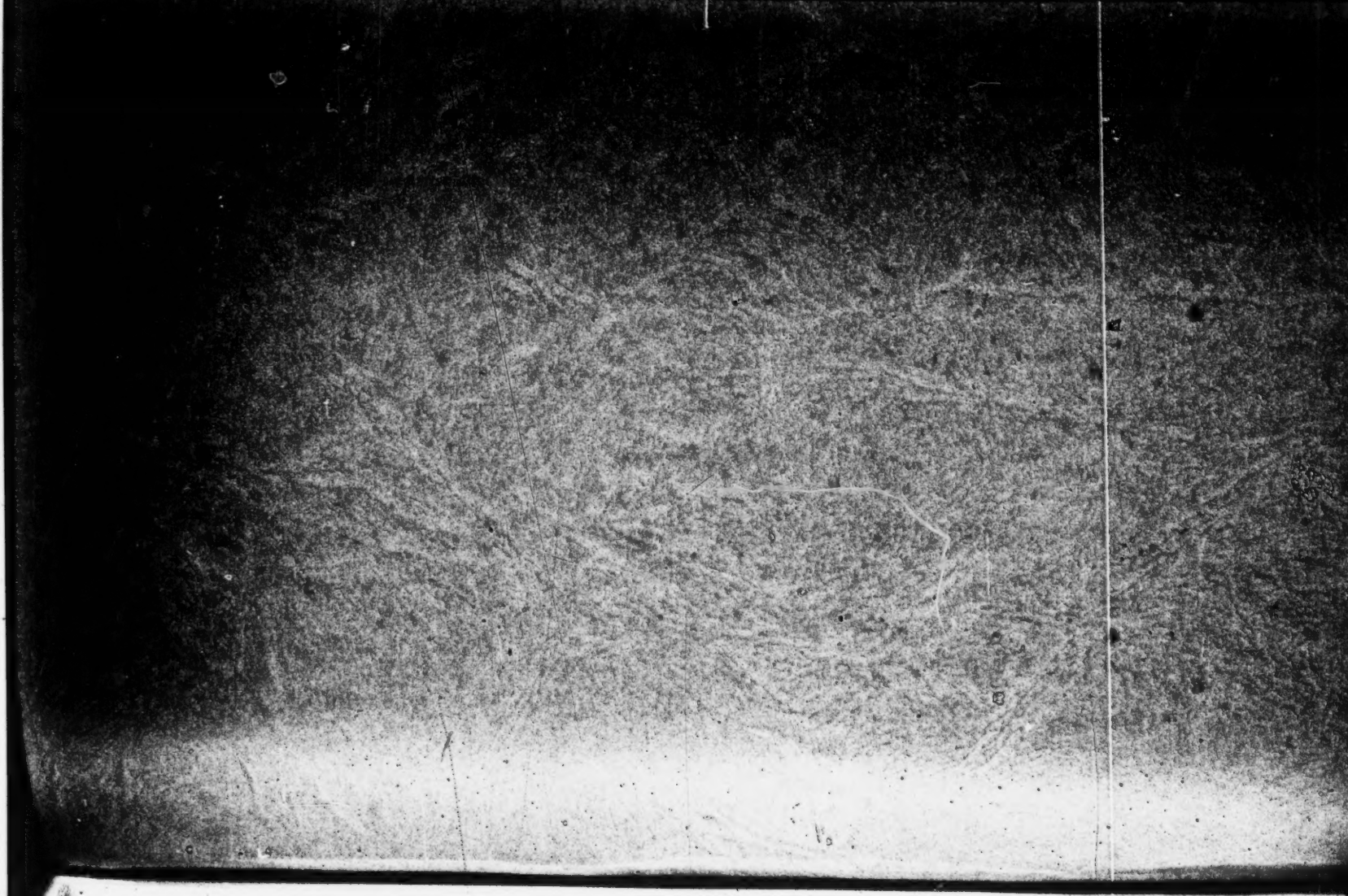
> "That case, however, does not justify a holding that appellant falls within the rule; on the contrary, while the concubine and the mistress are comparable to the prostitute, common understanding draws the line too sharply between those classes and the class which indulges occasionally in extramarital relations, to permit of a construction under the ejusdem generis rule that would exclude the latter class as immoral persons like prostitutes."

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be granted and that this Court should review the decision herein of the Circuit Court of Appeals for the Ninth Circuit.

ROGER O'DONNELL,
STEPHEN M. WHITE,
Counsel for Petitioner.

Dated: San Francisco, California,
August 4, 1933.



INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	5
Conclusion	9

CITATIONS

Cases:

Aplin v. *United States*, 41 F. (2d) 495	8, 9
Bauder v. *Uhl*, 211 Fed. 628	7
Carey v. *United States*, 265 Fed. 515	9
Coltabellotta v. *United States*, 45 F. (2d) 117	8
Ghadiali v. *United States*, 17 F. (2d) 236, certiorari denied, 274 U.S. 747	8, 9
Rocha, ex parte, 30 F. (2d) 823	9
United States v. *Bitty*, 208 U.S. 393	5, 7
Vajtauer v. *Commissioner of Immigration*, 273 U.S. 103	7
Van Pelt v. *United States*, 240 Fed. 346	9

Statutes:

Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 875, 889—	
Sec. 3 (U.S.C., Title 8, Sec. 136)	2
Sec. 19 (U.S.C., Title 8, Sec. 155)	2

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 325

INGER JULIANE HANSEN, PETITIONER

v.

EDWARD L. HAFF, ACTING COMMISSIONER OF IMMIGRATION for the Port of San Francisco

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

No opinion was rendered by the District Court. The majority (R. 37) and dissenting (R. 40) opinions in the Circuit Court of Appeals are reported in 65 F. (2d) 94.

JURISDICTION

The judgment sought to be reviewed was entered May 8, 1933 (R. 45). The petition for certiorari was filed on August 8, 1933. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner states that there are two questions presented. We think there is only one and that it should be stated as follows:

Where the evidence before the Secretary of Labor shows that a resident alien woman has been engaged in repeated acts of illicit sexual intercourse with a certain man over a long period of time; that thereafter she accompanied him abroad, that she maintained her illicit relations with him on this trip, that for at least a part of the trip they traveled together as man and wife, and that when taken into custody on the day of her return to this country she was found occupying the same room with this man at a hotel where they were registered as man and wife, may the alien be deported as having entered the United States for an immoral purpose within the meaning of the immigration laws?

STATUTES INVOLVED

Section 3 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874 (U.S.C., Title 8, Sec. 136), so far as pertinent, reads as follows:

> That the following classes of aliens shall be excluded from admission into the United States: * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *.

Section 19 of that Act (U.S.C., Title 8, Sec. 155) reads in part as follows:

> That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: * * *.

STATEMENT

Petitioner, an alien, was ordered deported, after a hearing, on the ground "that she entered the United States * * * for an immoral purpose" (Exhibit A, p. 55, on file with this Court).

The immigration file contains evidence (Exhibit A, pp. 3–11, 26–33) which shows that petitioner originally arrived in this country from Denmark in 1922. From that time until May 1931, with the exception of several trips abroad, she worked as a domestic servant and cook. In May 1931, accompanied by one Bolinger, a married man and an American citizen, she left Los Angeles for Europe. For approximately six years prior thereto Bolinger and the petitioner had engaged in repeated acts of sexual intercourse but did not live together. The greater part of the expenses of the trip to Europe were paid by Bolinger. On this trip the two continued their illicit relations, and during a part of the trip, at least, they traveled together as man and wife, petitioner being known as Mrs. Bolinger. They returned to this country on September 6, 1931, reentering at Seattle. Petitioner was admitted as a returning resident. On the night of

her arrival petitioner was taken into custody by the immigration authorities. At that time she was occupying a room with Bolinger in a Seattle hotel in which the two were registered as man and wife. At a preliminary hearing before the immigration authorities the petitioner admitted the previous illicit relations with Bolinger in Los Angeles and on the trip to Europe and said that she intended to continue such relations with him until they reached Los Angeles but that thereafter she did not intend to see him, "I might see him, but that is all." Bolinger also admitted their illicit relationship on the European trip (Ex. A, p. 12). At a subsequent hearing petitioner denied some of her prior admissions.[1]

To test the legality of the order of deportation petitioner filed in the United States District Court for the Northern District of California a petition for a writ of habeas corpus in which she contended, principally, that she should not be deported because "any intention she may have had to enter the United States [upon her return] for the purpose of having adulterous relations with a person of the United States was wholly incidental and immaterial to her purpose in returning to the United States to resume her residence therein and to resume her occupation as a domestic therein" (R. 1–8). An order to show cause was issued (R.

[1] For a more detailed statement of the facts, see the Findings and Decision of the Secretary of Labor (R. 11).

9), but, after a hearing (R. 19), the petition was denied (R. 20). Upon an appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgment of the District Court was affirmed, one judge dissenting (R. 37–45).

ARGUMENT

In *United States* v. *Bitty,* 208 U.S. 393, this Court, in construing a provision of one of the earlier Immigration Acts punishing the importation of any alien woman for the purpose of prostitution "or for any other immoral purpose" held that one who had brought an alien woman into the United States for the purpose of having her live with him as his concubine was guilty of importing her for an immoral purpose. The Court said (pp. 402–403):

> It may be admitted that in accordance with the familiar rule of *ejusdem generis,* the immoral purpose referred to by the words "any other immoral purpose", must be one of the same general class or kind as the particular purpose of "prostitution" specified in the same clause of the statute. 2 Lewis' Sunderland Stat. Const., § 423, and authorities cited. But that rule cannot avail the accused in this case; for, the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution. The prostitute may, in the popular

> sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life, if any regard whatever be had to the views that are almost universally held in this country as to the relations which may rightfully, from the standpoint of morality, exist between man and woman in the matter of sexual intercourse. We must assume that, in using the words "or for any other immoral purpose", Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse. Those views may not be overlooked in determining questions involving the morality or immorality of sexual intercourse between particular persons. * * *

While it may be true that, technically speaking, petitioner might not properly be classified as a concubine prior to her European trip because she did not actually live with Bolinger, the evidence shows that during that trip the two cohabited together at least a part of the time as man and wife, and on the very night petitioner arrived in this country she and Bolinger registered at a hotel as man and wife and occupied the same room. In view of this evidence we do not believe that the Secretary was required to accept blindly petitioner's disavowal of any intention to continue in such relationship on

her return to Los Angeles. Cf. *Bauder* v. *Uhl,* 211 Fed. 628, 633 (C.C.A. 2d). It cannot be said, therefore, that there was no support in the evidence for the Secretary's finding that petitioner was a "concubine" as that word is defined by standard authorities (R. 16–17). It is, of course, well settled that a finding by the Secretary should not be disturbed so long as there is some evidence to support it. *Vajtauer* v. *Commissioner of Immigration,* 273 U.S. 103.

But even if it be assumed that the relationship between petitioner and Bolinger did not amount to concubinage, there is nothing in the statute which supports the view that a lesser degree of immoral relationship between the sexes does not fall within its purview, and petitioner cites no decision supporting any such position. In applying the statute, we must, as this Court said in the *Bitty case, supra,* assume that in using the words "or for any other immoral purpose," "Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of [sexual] intercourse." By her own admission petitioner intended, until she reached Los Angeles, to continue the same type of illicit relationship with Bolinger as existed on their European trip, and we think it is a fair inference from the record despite petitioner's disavowal, if it may be called such, that she intended, after her

return to Los Angeles, that her relations with Bolinger should be at least as intimate as they had been before she went abroad. The only difference between such a relationship and the relationship of a concubine is in the matter of cohabitation. Petitioner may not have been a concubine because she did not live with Bolinger, but the immoral relationship was essentially the same. We submit that under any reasonable interpretation of the *ejusdem generis* rule a relationship of this kind must be considered as an "immoral purpose" within the meaning of the statute.

There is nothing in any of the cases relied upon by petitioner (Br., p. 7) that is contrary to our position. Most, if not all of them, proceed on the hypothesis that immoral conduct even less extensive than that of the petitioner would come within the purview of the statute. See also *Aplin* v. *United States,* 41 F. (2d) 495, 496 (C.C.A. 9th); *Coltabellotta* v. *United States,* 45 F. (2d) 117 (C.C.A. 2d), and *Ghadiali* v. *United States,* 17 F. (2d) 236, 237 (C.C.A. 9th), certiorari denied 274 U.S. 747.

Much of petitioner's brief is devoted to the contention that in order to come within the reach of the statute, the purpose which dominates and controls the alien in making the entry must be to engage in immoral practices. The assumption, of course, is that the evidence in this case is susceptible only of the interpretation that the immoral purpose was merely incidental to petitioner's de-

sire to return to her home and to resume her occupation as a domestic. While we think that the immigration authorities were entitled to draw a different conclusion from the evidence before them, the difficulty with petitioner's argument is that the only case upon which she relies that appears to lend any support to her position is a District Court decision, *Ex parte Rocha,* 30 F. (2d) 823 (S.D. Texas). Of course a conflict of this kind is not one which requires the granting of certiorari. The other cases cited by petitioner make it clear that it is sufficient if one of the purposes motivating the journey is the subsequent indulgence in immoral conduct. See also *Van Pelt* v. *United States,* 240 Fed. 346 (C.C.A. 4th); *Carey* v. *United States,* 265 Fed. 515, 517 (C.C.A. 8th); *Aplin* v. *United States, supra; Ghadiali* v. *United States, supra.*

CONCLUSION

The case was correctly decided below, and there exists no such conflict of decisions as requires the granting of certiorari. We respectfully submit that the petition for certiorari should be denied.

J. CRAWFORD BIGGS,
Solicitor General.
ANGUS D. MACLEAN,
Assistant Solicitor General.
HARRY S. RIDGELY,
W. MARVIN SMITH,
Attorneys.

SEPTEMBER 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	5
Conclusion	14

CITATIONS

Cases:

Aplin v. *United States*, 41 F. (2d) 495	10, 12
Bonness v. *United States*, 20 F. (2d) 754	10
Bauder v. *Uhl*, 211 Fed. 628	7
Blain v. *United States*, 22 F. (2d) 393	10
Carey v. *United States*, 265 Fed. 515	10, 13
Coltabellotta v. *United States*, 45 F. (2d) 117	11
Ghadiali v. *United States*, 17 F. (2d) 236, certiorari denied, 274 U.S. 747	13
Hart v. *United States*, 11 F. (2d) 499, certiorari denied, 273 U.S. 694	10
Hays v. *United States*, 231 Fed. 106, affirmed, 242 U.S. 470	9
Huffman v. *United States*, 259 Fed. 35	10
Johnson v. *United States*, 215 Fed. 679	9
Sibray v. *Kupples*, 185 Fed. 401	12
State v. *Fessel*, 74 Mo. 524	7
Suslak v. *United States*, 213 Fed. 913	11
Tang Tun v. *Edsell*, 223 U.S. 673	7
United States v. *Bitty*, 208 U.S. 393	6, 7, 8
Vajtauer v. *Commissioner*, 273 U.S. 103	6, 7, 13

Statutes:

Act of June 25, 1910, c. 395, 36 Stat, 825 (U.S.C., Title 18, Sec. 88)	9
Immigration Act of 1917, c. 29, 39 Stat. 874:	
Sec. 3 (U.S.C., Title 8, Sec. 136)	2
Sec. 19 (U.S.C., Title 8, Sec. 155)	3
Immigration Act of 1924, c. 190, 43 Stat. 165, Sec. 23 (U.S.C., Title 8, Sec. 221)	3

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 325

INGER JULIANE HANSEN, PETITIONER

v.

EDWARD L. HAFF, ACTING COMMISSIONER OF IMMIGRATION for the Port of San Francisco

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

No opinion was rendered by the District Court (R. 20). The majority (R. 37), and dissenting (R. 40) opinions in the Circuit Court of Appeals are reported in 65 F. (2d) 94.

JURISDICTION

The judgment to be reviewed was entered on May 8, 1933 (R. 45). Certiorari was granted by this Court on October 9, 1933 (R. 49). Jurisdiction of this Court is conferred by Section 240 (a) of the

Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner states that there are two questions presented. We think there is only one and that it should be stated as follows:

Where the evidence before the Secretary of Labor shows that a resident alien woman has been engaged in repeated acts of illicit sexual intercourse with a certain man over a long period of time; that thereafter she accompanied him abroad, that she maintained her illicit relations with him on this trip, that for at least a part of the trip they traveled together as man and wife, and that when taken into custody on the day of her return to this country she was found occupying the same room with this man at a hotel where they were registered as man and wife, may the alien be deported as having entered the United States for an immoral purpose within the meaning of the immigration laws?

STATUTES INVOLVED

Section 3 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874 (U.S.C., Title 8, Sec. 136), so far as pertinent, reads as follows:

> That the following classes of aliens shall be excluded from admission into the United States: * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *.

Section 19 of that Act (U.S.C., Title 8, Sec. 155) reads in part as follows:

> That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: * * *.

Section 23 of the Act of May 26, 1924, c. 190, 43 Stat. 165 (U.S.C., Title 8, Sec. 221), reads in part as follows:

> Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; and in any deportation proceeding against any alien the burden of proof shall be upon such alien to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigration visa, if any, or of other documents concerning such entry, in the custody of the Department of Labor.

STATEMENT

Petitioner, an alien, was ordered deported, after a hearing, on the ground "that she entered the United States * * * for an immoral purpose" (Exhibit A, p. 55, on file with this Court).

The immigration file contains evidence (Exhibit A, pp. 3–11, 26–33) which shows that petitioner

originally arrived in this country from Denmark in 1922. From that time until May 1931, with the exception of several trips abroad, she worked as a domestic servant and cook. In May 1931, accompanied by one Bolinger, a married man and an American citizen, she left Los Angeles for Europe. For approximately six years prior thereto Bolinger and the petitioner had engaged in repeated acts of sexual intercourse but did not live together. The greater part of the expenses of the trip to Europe were paid by Bolinger. On this trip the two continued their illicit relations, and during a part of the trip, at least, they traveled together as man and wife, petitioner being known as Mrs. Bolinger. They returned to this country on September 6, 1931, reentering at Seattle. Petitioner was admitted as a returning resident. On the night of her arrival petitioner was taken into custody by the immigration authorities. At that time she was occupying a room with Bolinger in a Seattle hotel in which the two were registered as man and wife. At a preliminary hearing before the immigration authorities the petitioner admitted the previous illicit relations with Bolinger in Los Angeles and on the trip to Europe and said that she intended to continue such relations with him until they reached Los Angeles but that thereafter she did not intend to see him. "I might see him, but that is all." Bolinger also admitted their illicit relationship on the European trip (Ex. A, p. 12). At a subsequent

hearing petitioner denied some of her prior admissions.

Petitioner's parents live in Denmark, and she not only has no relatives in this country, but she had established no home here, it being her habit to make her home at whatever place she was employed as a domestic (Ex. A, pp. 29, 30). Moreover, she had no employment awaiting her return here (pp. 4, 5, 30).

To test the legality of the order of deportation petitioner filed in the United States District Court for the Northern District of California a petition for a writ of habeas corpus in which she contended, principally, that she should not be deported because "any intention she may have had to enter the United States [upon her return] for the purpose of having adulterous relations with a person of the United States was wholly incidental and immaterial to her purpose in returning to the United States to resume her residence therein and to resume her occupation as a domestic therein" (R. 1–8). An order to show cause was issued (R. 9), but, after a hearing (R. 19), the petition was denied (R. 20). Upon an appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgment of the District Court was affirmed, one judge dissenting (R. 37–45).

ARGUMENT

1. Petitioner contends that her illicit sexual relationship here involved does not constitute actual concubinage, and, therefore, she is not excludable

as having entered for an "immoral purpose" within the meaning of the applicable immigration provisions, *supra*. She appears to rely upon the decision of this Court in *United States* v. *Bitty*, 208 U.S. 393, to support her contention.

We think that there was evidence warranting the Secretary of Labor in finding that she was a concubine, and therefore it is not open to establish that his decision is wrong, by merely attempting to weigh that evidence. As said in *Vajtauer* v. *Commissioner*, 273 U.S. 103, 106:

> Deportation without a fair hearing or on charges unsupported by any evidence is a denial of due process which may be corrected on *habeas corpus*. Cf. *Chin Yow* v. *United States*, 208 U.S. 8; *Kwock Jan Fat* v. *White*, 253 U.S. 454. But a want of due process is not established by showing merely that the decision is erroneous, *Chin Yow* v. *United States, supra*, 13, or that incompetent evidence was received and considered. See *Tisi* v. *Tod*, 264 U.S. 131, 133. Upon a collateral review in *habeas corpus* proceedings, it is sufficient that there was some evidence from which the conclusion of the administrative tribunal could be deduced and that it committed no error so flagrant as to convince a court of the essential unfairness of the trial. *Tisi* v. *Tod, supra*.

The evidence discloses that petitioner went abroad in the company of her paramour, lived

there much of the time as his wife, and apparently returned in that status, for immediately upon entering this country on their return trip, they registered and remained at a hotel in such relationship. It was at the hotel she was apprehended by the immigration authorities. Such evidence establishes concubinage. (R. 16–17.) *United States* v. *Bitty*, 208 U.S. 393, 400–401, *supra*, and *State* v. *Feasel*, 74 Mo. 524. It is true she protested that she did not intend to continue such relations after her return to California, but the Secretary was not bound to accept her statements to that effect. *Tang Tun* v. *Edsell*, 223 U.S. 673, 681; *Bauder* v. *Uhl*, 211 Fed. 628, 633 (C.C.A. 2d). As she had neither home nor place of employment here upon her return, the Secretary was warranted in assuming that her admitted illicit relationship would continue. *Vajtauer* v. *Commissioner*, 273 U.S. 103, 111, *supra*. She was clearly a concubine on her outward and inward trip, and the Secretary was warranted in concluding that such continued cohabiting was their purpose upon their return here.

In order, however, to sustain the judgment below, it is unnecessary to demonstrate that petitioner's illicit sexual relations constituted her a technical concubine. Nor does the rule *ejusdem generis* require that the words "any other immoral purpose" in the statute (*supra*, p. 2) be limited to concubinage. Indeed, the underlying principle of

United States v. *Bitty*, 208 U.S. 393, 402–403, *supra*, is to the contrary. In that case it was said:

> It may be admitted that in accordance with the familiar rule of *ejusdem generis*, the immoral purpose referred to by the words "any other immoral purpose," must be one of the same general class or kind as the particular purpose of "prostitution" specified in the same clause of the statute. 2 Lewis' Sunderland Stat. Const., § 423, and authorities cited. But that rule cannot avail the accused in this case; for, the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution. The prostitute may, in the popular sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life, if any regard whatever be had to the views that are almost universally held in this country as to the relations which may rightfully, from the standpoint of morality, exist between man and woman in the matter of sexual intercourse. We must assume that in using the words "or for any other immoral purpose," Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse. Those views may not be overlooked in determining questions involving the mor-

> ality or immorality of sexual intercourse between particular persons. * * *

It is thus made clear that the statute was aimed at all forms of sexual immorality which are condemned by "the views that are almost universally held in this country as to the relations which may rightfully, from the standpoint of morality, exist between man and woman in the matter of sexual intercourse." It would require blind adherance to technicality to hold that carrying on illicit sexual intercourse with a man while living in his home was within the reach of the statute but that the same continuous intercourse carried on with the same man elsewhere, as in the case at bar, fell outside the statute.

The question has been further set at rest by the rulings under the so-called White Slave Statute, which also contains the words "any other immoral purpose" (c. 395, 36 Stat. 825).

In *Hays* v. *United States*, 231 Fed. 106 (C.C.A. 8th), affirmed, 242 U.S. 470, Hays was convicted under two counts of an indictment which charged him with being concerned with the transportation of a young woman for the purpose of having illicit sexual relations with her. The conviction was upheld, and on appeal the judgment was affirmed by this Court. 242 U.S. 470, 486.

In *Johnson* v. *United States*, 215 Fed. 679 (C.C.A. 7th), conviction was upheld under an

indictment which charged transportation of a woman for the purpose of having sexual intercourse with her. In meeting the contention that the statute did not apply, the court said (p. 683):

> * * * So it becomes apparent that "commercialized vice" or "the traffic in women for gain" is not the common ground, that the nexus indicative of the genus is sexual immorality, and that fornication and adultery are species of that genus. This conclusion is fortified by *United States* v. *Bitty*, 208 U.S. 393, 28 Sup.Ct. 396, 52 L.Ed. 543, where in construing the prohibition of the immigration act against the importation of alien women "for the purpose of prostitution or any other immoral purpose," the latter phrase was held to mean unlawful sexual intercourse regardless of financial considerations. See, also, *United States* v. *Flaspoller* (D.C.) 205 Fed. 1006, in reference to the White Slave Traffic Act.

To the same effect are—

Huffman v. *United States*, 259 Fed. 35, 39 (C.C.A. 8th).

Carey v. *United States*, 265 Fed. 515 (C.C.A. 8th).

Bonness v. *United States*, 20 F. (2d) 754 (C.C.A. 9th).

Blain v. *United States*, 22 F. (2d) 393 (C.C.A. 8th).

Hart v. *United States*, 11 F. (2d) 499 (C.C.A. 9th), certiorari denied, 273 U.S. 694.

Aplin v. *United States*, 41 F. (2d) 495 (C.C.A. 9th).

Coltabellotta v. *United States*, 45 F. (2d) 117 (C.C.A. 2d).

Suslak v. *United States*, 213 Fed. 913, 917 (C.C.A. 9th).

There appears to be no escape from the conclusion that petitioner's immorality is of the type covered by the statute, and she is unable to cite any decision holding otherwise.

2. The remaining angle of the question requiring consideration is whether, under the facts, the Secretary was warranted in finding that petitioner entered the country for an immoral purpose. It is her contention that she had previously lived here, went abroad on a visit, and was merely returning to her home here, so that while she had engaged both abroad and here in immoral practices, it could not be established nor assumed that such practices constituted the purpose of her return trip. Here again we must apply the rule that if there be any evidence from which the Secretary could draw the inference that petitioner's purpose in entering the United States was an immoral one, no judicial relief can be granted her. Petitioner argues that because she had previously lived in the United States, her return here was the mere consequence of an intended temporary visit abroad. Over against such claims must be placed the fact that she went abroad for an immoral purpose, she had neither a home nor a job awaiting her upon her return here, she has no relatives in this country, but has parents residing abroad, and further that her illicit relations

carried on abroad were continued up to the time of her arrest after she had entered upon her return trip. Under these circumstances it would be futile to speculate as to whether she would have returned here if her paramour had entirely severed relations with her while abroad. Having gone abroad for an immoral purpose, as the evidence clearly establishes, the Secretary's conclusion from the whole evidence that she returned for that purpose, at least in part, cannot be said to be either arbitrary or utterly lacking in supporting evidence. *Sibray* v. *Kupples,* 185 Fed. 401, 402 (C.C.A. 3d). The immoral purpose need not be the sole purpose of her reentry. Thus in *Aplin* v. *United States,* 41 F. (2d) 495, 496 (C.C.A. 9th), it was said:

> Finally, it is contended that there was a failure to prove that the transportation was for an immoral purpose. Purpose or intent is generally proved by circumstantial evidence, and may be so proved under all the authorities. Here there were illicit relations in Oregon before their departure from that state, there were illicit relations in the course of the trip, and illicit relations after its termination. From these facts and circumstances, the jury might well infer that at least one purpose of the transportation was debauchery, or other immoral purpose. *Tobias* v. *United States* (C.C.A.) 2 F. (2d) 361; *Noland* v. *United States* (C.C.A.) 10 F. (2d) 768; *Hart* v. *United States* (C.C.A.) 11 F. (2d) 499; *Ghadiali* v. *United States* (C.C.A.) 17 F. (2d) 236.

In *Ghadiali* v. *United States,* 17 F. (2d) 236, 237 (C.C.A. 9th), certiorari denied, 274 U.S. 747, it was said:

> * * * He had a right to cause her to be transported in interstate commerce in the discharge of her secretarial duties without transgressing the provisions of the law; but if, in addition to the secretarial duties, it was also his purpose to have sexual intercourse with her, and, entertaining such purpose, transported her in interstate commerce, he would be guilty. It was lawful to transport her in interstate commerce as his secretary, but unlawful to have her as his mistress as well. *VanPelt* v. *U. S.* (C.C.A.) 240 F. 346, L. R. A. 1917E, 1135; *Sloan* v. *United States* (C.C.A.) 287 F. 91.

See also—

> *Carey* v. *United States,* 265 Fed. 515, 517, 518 (C.C.A. 8th).

As said in *Vajtauer* v. *Commissioner of Immigration,* 273 U.S. 103, 106, we think "there was some evidence from which the conclusion of the administrative tribunal could be deduced" that at least one of the purposes of petitioner's return to this country was the immoral one as charged in the warrant of deportation.

The cases upon which petitioner relies do not, when properly analyzed, compel a different conclusion.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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U. S. GOVERNMENT PRINTING OFFICE: 1933

SUPREME COURT OF THE UNITED STATES.

No. 325.—October Term, 1933.

Inger J. Hansen, Petitioner,
vs.
Edward L. Haff, Acting Commissioner of Immigration.

On Writ of Certiorari to the Circuit Court of Appeals for the Ninth Circuit.

[March 5, 1934.]

Mr. Justice Roberts delivered the opinion of the Court.

By section 3 of the Immigration Act of 1917[1] Congress ordained "That the following classes of aliens shall be excluded from admission into the United States: . . . prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose." In reliance upon this mandate the petitioner was ordered deported, and the question is whether she is within the proscribed class.

She is a citizen of Denmark, and first came here in 1922, making her home in Los Angeles, California, where she was employed as a domestic servant. In 1924 she became acquainted with a married man and in 1925 commenced having illicit relations with him; she did not live with him and was not supported by him, but resided where she was employed and supported herself from her own earnings, although he gave her money and clothing from time to time. In 1926 she made a trip to Denmark to visit her parents, and returned to Los Angeles in 1928 where she again took service as a domestic. In May, 1931, she made a second visit to Denmark to see her relatives. On this occasion she was accompanied by the man with whom she had been intimate, who paid part of her expenses. He went to Europe to attend a convention in Vienna. For a portion of the time they travelled together in Europe, having illicit relations. They returned together through Canada, coming from Vancouver to Seattle, where they entered the United States, she being admitted by the authorities as a returning resident. They went to a hotel in Seattl where they registered as

[1] Act of February 5, 1917, c. 29, 39 Stat. 874; U. S. C. Title 8, § 136.

man and wife. Upon her arrest by immigration officers she admitted her purpose to continue the relationship of husband and wife with the man, until they should arrive in Los Angeles, but denied that it was her intention to continue it after arrival in that city.

Upon these facts, developed at the hearing before a board of inspectors, the Secretary of Labor ordered the petitioner deported. She petitioned the District Court for a writ of habeas corpus, an order to show cause was issued and, after hearing, the writ was denied. On appeal the Circuit Court of Appeals affirmed.[2] The case is here on certiorari.

The petitioner's previous residence here and her possession of a reentry permit do not entitle her to remain in this country. *Lapina* v. *Williams,* 232 U. S. 78; *Lewis* v. *Frick,* 233 U. S. 291. She was liable to deportation at any time within five years of her entry at the Port of Seattle, if she was a member of one of the prohibited classes of aliens.[3]

Was she a prostitute, or person coming into the country "for the purpose of prostitution or for any other immoral purpose" within the intent of Section 3 of the Act of 1917? The respondent does not contend that she is a prostitute or that her purpose in entering the United States was to practice prostitution, but he affirms that she did come for an immoral purpose as defined by the statute. We cannot adopt this conclusion.

The principle of *ejusdem generis* limits the connotation of the words "any other immoral purpose" to such as are of like character with prostitution, *United States* v. *Bitty,* 208 U. S. 393, 401; and extra-marital relations, short of concubinage, fall short of that description.

Moreover, it can not be said that the petitioner's entry was for the purpose of having such relations. The respondent argues that as she had indulged in misconduct before leaving, had continued that misconduct while on her trip abroad and intended to continue it at least until she should arrive in Los Angeles, the Secretary of Labor was justified in disbelieving her statement that the relations would cease when she took up her residence in that city.

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[2] 65 F. (2d) 94.

[3] Act of February 5, 1917, c. 29, sec. 19; 39 Stat. 889; U. S. C. Title 8, § 155.

This may be conceded; but it does not follow that her purpose in returning to the United States was to continue her irregular and improper conduct. The fact is that she was returning to her former residence, and nothing is disclosed to indicate that she did not intend, as she claimed, to resume her employment as a domestic. Her entry cannot be said to be with the purpose "only that she might live in a state of concubinage." *United States* v. *Bitty*, *supra*, 403. People not of good moral character like others, travel from place to place and change their residence. But to say that because they indulge in illegal or immoral acts, they travel for that purpose, is to emphasize that which is incidental and ignore what is of primary significance. Compare *Ex parte Rocha*, 30 F. (2d) 823.

The Mann Act[4] creates the offense of transporting in interstate commerce a woman or girl "for the purpose of prostitution or debauchery, or for any other immoral purpose . . ." This court has said that act "seeks to reach and punish the movement in interstate commerce of women and girls with a view to the accomplishment of the unlawful purposes prohibited." *Caminetti* v. *United States*, 242 U. S. 470, 491. Accordingly it has been held that the transportation denounced must have for its object or be a means of effecting or facilitating the sexual intercourse of the participants. If the purpose of the journey is not sexual intercourse, though that be contemplated, the statute is not violated. *Welsch* v. *United States*, 220 Fed. 764; *Fisher* v. *United States*, 266 Fed. 667; *Sloan* v. *United States*, 287 Fed. 91; *Alpert* v. *United States*, 12 F. (2d) 352; *Hunter* v. *United States*, 45 F. (2d) 55. So here, by the language of the act, the purpose of the entry is made controlling. And we think it plain that in no proper sense may the entry of the petitioner be said to have been for the purpose of immoral sexual relations.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[4]Act of June 25, 1910, c. 395, 36 Stat. 825; U. S. C. Title 18, §§ 397-400.

SUPREME COURT OF THE UNITED STATES.

No. 325.—October Term, 1933.

Inger Juliane Hansen, Petitioner,
vs.
Edward L. Haff, Acting Commissioner of Immigration for the Port of San Francisco.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[March 5, 1934.]

Mr. Justice Butler, dissenting.

The statute forbids admission of "persons coming into the United States for the purpose of prostitution or for any other immoral purpose." The doctrine of this decision is that "extra-marital relations" of an unmarried woman that fall short of concubinage are not within the condemnation of the statute. But there is no ground for the assumption that petitioner is not the concubine of a married man. Since 1924 she has continued illicit relations with him. They cohabited as, and held themselves out to be, husband and wife abroad and in this country while not in the vicinity of his home. Admittedly, these relations were to continue until again they reached that neighborhood. There is abundant warrant for the Secretary's conclusion that petitioner returned to this country as, and intending to continue to be, that man's concubine. The findings quote Webster's definition—"a woman who cohabits with a man without being his wife". The Secretary found her to be such a person. He relied upon, and I think rightly applied the opinion in, *United States* v. *Bitty*, 208 U. S. 333.

Bitty was indicted under a provision of the Act of February 20, 1907, 34 Stat. 898, forbidding "the importation into the United States of any alien woman . . . for the purpose of prostitution, or for any other immoral purpose". The indictment alleged importation of a woman for an "immoral purpose", namely, "that she should live with him as his [Bitty's] concubine". The circuit court dismissed the indictment on the ground that the facts alleged did not constitute a violation of the statute. This court reversed.

The phrase there construed is in the same words as that now under consideration. They undoubtedly have the same meaning. In that case defendant's counsel maintained that Congress did not by that Act intend to legislate against "those isolated cases where certain individuals come into this country with their mistresses". But repelling that construction, this court said (p. 401) that: "In forbidding the importation of alien women 'for any other immoral purpose', Congress evidently thought that there were purposes in connection with the importations of alien women which, as in the case of importations for prostitution, were to be deemed immoral". After reference to the rule of *ejusdem generis* relied on by the defendant, the court said (p. 402): "But that rule cannot avail the accused in this case; for, the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution. The prostitute may, in the popular sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life, if any regard whatever be had to the views that are almost universally held in this country, as to the relations which may rightfully, from the standpoint of morality, exist between man and woman, in the matter of sexual intercourse. . . . (p. 403.) The statute in question, it must be remembered, was intended to keep out of this country immigrants whose permanent residence here would not be desirable or for the common good, and we cannot suppose either that Congress intended to exempt from the operation of the statute the importation of an alien woman brought here only that she might live in a state of concubinage with the man importing her, or that it did not regard such an importation as being for an immoral purpose."

Moreover, the statute is not limited to prostitution and concubinage. While the Secretary regarded her as a concubine, his decision may not fairly be held to depend upon that characterization. Plainly it rests upon the ground there stated "that she entered for an immoral purpose" condemned by the statute. The law does not require him more definitely to classify. Refinements of nomenclature adopted for the sake of decency in speech may not be used to conjure up doubts and distinctions that obscure the real substance of the statute. The meaning of the findings is that petitioner's doings and course of living constitute a kind of im-

morality that bars admission. The Secretary rightly may have deemed that her admitted intention temporarily to continue, when coupled with environment, opportunity and temptation under which habitual transgression had developed and for years persisted, amounted to a fixed purpose indefinitely to remain in concubinage. That is enough.

And there is nothing in the opinion in *United States* v. *Bitty, supra,* or elsewhere to support the idea that Congress intended to keep out only those coming exclusively for the purposes referred to and to admit prostitutes, concubines and the like intending to follow legitimate occupation while practicing, incidentally or otherwise, any of the immoralities covered by the statute. Indeed, the court's opinion implies that if concubinage were her principal or primary purpose she ought to be excluded even though she intended regularly to pursue her work as a domestic. The making of exclusion to depend upon the determination whether the immoral purpose is dominant or subordinate goes far to strike down the statute by making its enforcement difficult and in many cases practically impossible. Congress undoubtedly intended to exclude those who entertain a purpose here to practice prostitution or immorality of that sort. That is the construction adopted by the Secretary, the District Court and the Circuit Court of Appeals. They are right. Petitioner's application for a writ of habeas corpus was properly denied.